

**Statement of Substance of Interview  
under 37 C.F.R § 1.133**

Applicants submit this Statement of Substance of Interview in accordance with 37 C.F.R § 1.133 to be made of record for the application for patent identified herewith and respectfully requests entry of the statement as set forth herein.

Applicants first wish to thank the Examiner for phoning Applicants' representative on October 5, 2007. In the interview, the Examiner indicated that the telephone call was to discuss potential amendments that could be made by the Examiner in view of what was stated to be allowable subject matter. In addition, the provisional obviousness-type double patenting (ODP) rejection cited in the previous Office Action was discussed. With regard to the suggested amendments, the Examiner suggested two amendments to Claim 1. The first included amending an upper range of silicon oxide from 59% to 58.9% because the value of 58.9% was an amount provided in an example of the as-filed application. The second amendment included changing the phrase "silicon oxide" to "silicon dioxide." With regard to the provisional ODP rejection, Applicants' representative reminded the Examiner that if the subject application were to issue, it would be the first of three co-pending applications filed on the same date, two of which had been used as references in the provisional ODP rejection. Applicants suggested that, in accordance with the rules for provisional ODP rejections, the ODP rejection be withdrawn and the subject application would be allowed to issue. The Examiner agreed with this strategy.

This is intended to be a written statement as to the substance of a telephone interview held on October 5, 2007.

The paper submitted herewith is responsive to one or more items of discussion or agreement arrived at during the interview held on October 5, 2007.

### Remarks

Claims 1-3 and 5-15 are pending in this Application. Claims 4 and 16 had been previously canceled without prejudice. With this paper, Claims 2, 3 and 7-11 are canceled without prejudice. In the Office Action mailed October 12, 2007, the Examiner:

- rejected Claims 1, 5, 6 and 12-15 under 35 U.S.C. 112, first paragraph, and 35 U.S.C. 132;
- maintained a provisional obviousness-type double patenting (ODP) rejection over copending U.S. Application Publication No. 2004/0081827 and copending U.S. Application Publication No. 2004/0079260; and
- rejected Claims 1, 5, 6 and 12-15 under 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 3,365,315 (herein "Beck") or U.S. Patent No. 4,983,550 (herein "Goetz").

Applicants respectfully address herein the basis for each of the Examiner's rejections.

Applicants respectfully remind the Examiner of applications that derive priority from the same applications as the subject Application for patent, some of which may be examined by other examiners at the USPTO. The list of such applications that derive priority from the same applications and their status is provided below.

<u>APPLICATION NO.</u>	<u>STATUS</u>
10/648,184	Pending
10/648,585	Pending
10/787,894	Pending
10/648,010	Abandoned
10/648,009	Pending
11/026,340	Abandoned

Applicants note that to the best of their knowledge none of the pending patent applications listed in the table have received a Notice of Allowability. Applicants respectfully traverse the provisional ODP rejection recited in the Office Action mailed October 12, 2007, and request that it be held in abeyance until there is allowable subject matter in one of the co-pending applications, at which time the provisional rejection should be withdrawn in that application if no other applications listed in the table has received a Notice of Allowability.

Applicants, with this paper, have amended Claim 1 to include 58.9 wt.% silicon dioxide in accordance with a suggestion made by phone on October 5, 2007, and in the Office Action mailed October 12, 2007. No new matter is included with these amendments. Applicants submit that these amendments overcome the rejection set forth by the Examiner under 35 U.S.C. 112, first paragraph, and 35 U.S.C. 132 and point out that the Examiner stated that the new matter rejection would be withdrawn should such amendments be made.

Claim 1 is further amended to include not more than 58.9 wt.% silicon dioxide and 12.8 wt.% to 40 wt.% aluminum oxide. Applicants submit that Beck does not anticipate nor is the reference obvious over Applicants' claim 1 because Beck teaches an entirely different range of silicon dioxide which is not the same as Applicants' claimed range and does not overlap Applicants' claimed range. There is no suggestion or motivation to change Beck's range of silicon dioxide and Applicants' point out that any suggestions made must also include the functional or operational aspects of the reference along with all the elements and the structure resulting from the combination [e.g., *Stiftung v. Renishaw PLC*, 945 F.2d 1173, 1183 (Fed. Cir. 1991)]. Applicants submit that there is no suggestion to modify the Beck reference in the reference itself. Moreover, when there is no apparent disadvantage present in a particular prior art reference, such as in Beck, then there can be no motivation to combine the teaching of that reference with another prior art document. [e.g., *Winner Int'l Royalty Corp. v. Wang*, 202 F.3d 1340, 1349 (Fed. Cir. 2000)]. One of ordinary skill would not look to Beck, a reference that teaches a different microsphere with a completely different range of silicon dioxide, to make Applicants' claimed invention. As such, Applicants submit that Beck does not anticipate the

claimed invention because it does not teach each and every element of Applicants' claimed invention. In addition, Beck is not an obvious reference because it does not teach or suggest each and every element of the claimed invention or the claimed invention on its whole and because there is no motivation to modify Beck in order to arrive at Applicants' claimed invention in view of its very different teaching of essential elements. Applicants respectfully request the rejections relying on Beck under 102(b) or, in the alternative, under 35 U.S.C. § 103(a), be removed.

With regard to Goetz, Applicants' respectfully point out that Goetz also does not teach each and every element of Applicants' claimed invention nor is the Goetz reference obvious over Applicants' claimed invention. Goetz teaches an entirely different range of alumina oxide, which is 0 to 10% for an  $R_2O_3$  other than  $B_2O_3$  (see, e.g., Abstract; Col. 2, ll. 50-60) and stated to be only 2 to 7% when in the form of alumina oxide (Col. 3, ll. 65-55). As such, Goetz cannot anticipate Applicants' claimed invention because it does not teach each and every element of the claimed invention. In addition, there is no motivation to modify Goetz to arrive at Applicants' claimed invention because Goetz, itself, offers no suggestion or motivation to modify its reference. One of ordinary skill would not look to Goetz for any suggestion to make Applicants' claimed invention when it teaches a different microsphere and a completely different range of elements, such as alumina oxide. And, when there is no apparent disadvantage present in a particular prior art reference, such as Goetz, then there can be no motivation to combine the teaching of that reference with another prior art document. [e.g., *Winner Int'l Royalty Corp. v. Wang*, 202 F.3d 1340, 1349 (Fed. Cir. 2000)]. As such, Applicants submit that Goetz is not obvious over Applicants claimed invention because it does not teach or suggest each and every element of the claimed invention or the claimed invention on its whole and because there is no motivation to modify Goetz in order to arrive at Applicants' claimed invention in view of its very different teaching of essential elements. Applicants respectfully request the rejections relying on Goetz under 102(b) or, in the alternative, under 35 U.S.C. § 103(a), be removed.

### **Conclusion**

Applicants respectfully submit that the Application for patent is in condition for allowance, and pursuant to the filing of this Amendment, Applicants earnestly seek allowance of the claims, as provided in the Listing of Claims beginning on page 2 of this paper.

Should the Examiner have questions, comments, or suggestions in furtherance of the prosecution of this Application, please contact Applicants' representative at 214-999-4330. Applicants, through their representative, stand ready to conduct a telephone interview with the Examiner to review this Application if the Examiner believes that such an interview would assist in the advancement of this Application.

This paper is submitted concurrently with a Request for Continued Examination and the appropriate fees. To the extent that any further fees are required during the pendency of this Application, including petition fees, the Commissioner is hereby authorized to charge payment of any additional fees, including, without limitation, any fees under 37 C.F.R. § 1.16 or 37 C.F.R. § 1.17, to Deposit Account No. 07-0153 of Gardere Wynne Sewell LLP and reference Attorney Docket No. 129843-1104.

In the event that any additional time is needed for this filing, or any additional time in excess of that requested in a petition for an extension of time, please consider this a petition for an extension of time for any needed extension of time pursuant to 37 C.F.R. § 1.136 or any other section or provision of Title 37. Applicants respectfully request that the Commissioner grant any such petition and authorize the Commissioner to charge the Deposit Account referenced above. Please credit any overpayments to this same Deposit Account.

This is intended to be a complete response to the Office Action made mailed on the date of October 12, 2007.

Attorney No. 129843-1104  
Customer No. 60148

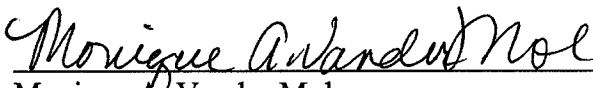
AMENDMENT  
Application No. 10/648,009

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**Please direct all correspondence to the practitioner listed below at Customer No. 60148.**

Dated: January 14, 2008

Respectfully submitted,

  
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